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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/975,588	10/11/2001	Benny B. Johansen	RXSD 1019-1	8700
22470	7590	07/01/2005	EXAMINER	
HAYNES BEFFEL & WOLFELD LLP P O BOX 366 HALF MOON BAY, CA 94019			LEE, PING	
			ART UNIT	PAPER NUMBER
			2644	

DATE MAILED: 07/01/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/975,588

Applicant(s)

JOHANSEN ET AL.

Examiner

Ping Lee

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 26 December 2001.
2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-41 is/are pending in the application.
4a) Of the above claim(s) _____ is/are withdrawn from consideration.
5) ☐ Claim(s) _____ is/are allowed.
6) ☒ Claim(s) 1-41 is/are rejected.
7) ☐ Claim(s) _____ is/are objected to.
8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date 12/26/01.
4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: _____.

DETAILED ACTION

Claim Rejections - 35 USC § 112

1. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

2. Claims 9-16 and 22-26 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Regarding claim 9, step e fails to properly claim the invention. During step b, the first audio source is muted, so the state in step e should be in muted state, then continue "un-muting the first audio source".

Claim 22 has the same defect as indicated for claim 9.

Claim Rejections - 35 USC § 102

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.

4. Claims 1, 2, 8, 17, 27, 28, 35 and 36 are rejected under 35 U.S.C. 102(a) as being anticipated by hearingrx.com.

Regarding claims 27, 28, 35 and 36, hearingrx.com discloses a method of testing the hearing of a user utilizing a speaker of a computer system. Although not explicitly shown, the computer inherently including a first audio source and a second audio

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source. A computer program is downloaded from the website ("DOWNLOAD SOUND FILES") to the computer. After that, the program is being executed. The execution of the program as disclosed in hearingrx.com un-muting the first audio source (if it is muted, it wouldn't be able to sent signal to the speaker). A stimulus is generated ("HEARING TEST") and an input is received from the user indicating audibility.

Regarding claims 1, 2, 8 and 17, hearingrx.com discloses a method of testing the hearing of a user utilizing a speaker of a computer system. Although not explicitly shown, the computer inherently including a first audio source and a second audio source. A computer program is downloaded from the website ("DOWNLOAD SOUND FILES") to the computer. After that, the program is being executed. The execution of the computer program muting the first audio source (at disclosed under "SETUP VOLUME CONTROL", sound source window exclamation is muted). A stimulus is generated ("HEARING TEST") and an input is received from the user indicating audibility.

Claim Rejections - 35 USC § 103

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of

the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

7. Claims 3-6, 18-20, 29-34 and 37-41 are rejected under 35 U.S.C. 103(a) as being unpatentable over a hearing test program from hearingrx.com.

Regarding claims 3 and 29, although hearingrx.com teaches downloading the program, it is within the level of ordinary skill in the art to use other well known methods, such as through email, to transfer the program.

Regarding claims 4-6, 18-20, 30-32 and 37-39, the printout of hearingrx.com teaches that sound volume has to be adjusted. Therefore, it would have been obvious for the user to check the box and adjust the volume setting.

Regarding claims 33, 34, 40 and 41, although hearingrx.com fails to explicitly show the sound source, it would have been obvious to one of ordinary skill in the art to use any suitable sound source to generate the testing stimulus.

8. Claims 7, 9-16 and 21-26 are rejected under 35 U.S.C. 103(a) as being unpatentable over a hearing test program from hearingrx.com in view of didyouhearme.com and Barmore (US 6,016,352).

Regarding claims 7, 9, 10, 15, 16, 21, 22 and 26, hearingrx.com discloses a method of testing the hearing of a user utilizing a speaker of a computer system. The

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printout of the hearing test program from hearingrx.com fails to show the step of storing a value that indicates whether the first audio source was muted and if the stored value indicates that the first audio source was not muted, then muting the first audio source.

The printout of the hearing test program from hearingrx.com teaches that using speakers for testing would not be as accurate as the one using the headphone. Furthermore, the user has to cover one ear while the other one is being tested. Another similar on-line hearing testing using speaker, didyouhearme.com, teaches that the user has to be in a quiet room, no noise or sound should be presented during the test. The accuracy of the test is, as understood by one skilled in the art, depended on the testing environment has no other sound except the testing stimulus regardless whether the testing is performed at home or at professional testing facility (with anechoic chamber). In order to make sure there is no other sound in a nonprofessional setting, all sound sources should be cut off whenever it is possible. A computer, as commonly known, could have multiple sound sources, including microphone. The user can manually mute each and every sound source, but this takes time and the user sometime might forget. Barmore teaches a muting control circuit for computer sound circuit. A plurality of sound sources could be muted by a single GPIO bit (col. 5, lines 24-30). Thus, it would have been obvious to one of ordinary skill in the art to modify the hearing test program from hearingrx.com in view of didyouhearme.com and Barmore by muting the unused sound sources in a computer during hearing testing using a single bit if the source has not been muted in order to allow the user to take the test without manually muting the sources.

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Regarding claim 11, although hearingrx.com teaches downloading the program, it is within the level of ordinary skill in the art to use other well known methods, such as through email, to transfer the program.


Regarding claims 12-14 and 23-25, the muting as suggesting by Barmore should change the setting in the mute box and volume setting.

Regarding claims 40 and 41, although hearingrx.com fails to explicitly show the sound source, it would have been obvious to one of ordinary skill in the art to use any suitable sound source to generate the testing stimulus.

9. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Ping Lee whose telephone number is 571-272-7522. The examiner can normally be reached on Monday and Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Vivian C. Chin can be reached on 571-272-7848. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


Ping Lee
Primary Examiner
Art Unit 2644

pwl